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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 171222999-8208-02]**

**RIN 0648-BH46**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 1**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement management measures described in Abbreviated Framework Amendment 1 (Abbreviated Framework 1) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule reduces the commercial and recreational annual catch limits (ACLs) for red grouper in the exclusive economic zone (EEZ) of the South Atlantic. The purpose of this final rule is to address overfishing of red grouper.

**DATES:** This final rule is effective on August 27, 2018.

**ADDRESSES:** Electronic copies of Abbreviated Framework 1, which includes a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from [www.regulations.gov](http://www.regulations.gov) or the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/sg/2017/red\\_grouper\\_framework/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2017/red_grouper_framework/index.html). NMFS included a reference to an environmental assessment in the proposed rule for Abbreviated Framework 1; however, and more specifically, a categorical exclusion was prepared, and is available upon request.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: [Frank.Helies@noaa.gov](mailto:Frank.Helies@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes red grouper, along with other snapper-grouper species. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights described in this final rule are in round weight.

On April 3, 2018, NMFS published a proposed rule for the framework action and requested public comment (83 FR

14234). The proposed rule and framework action outline the rationale for the action contained in this final rule. A summary of the management measure described in the framework action and implemented by this final rule is provided below.

### **Management Measures Contained in This Final Rule**

This final rule revises the ACLs for South Atlantic red grouper for both the commercial and recreational sectors. The current total ACL (commercial and recreational ACL combined) is 780,000 lb (353,802 kg). The total ACL is divided into a commercial sector ACL of 343,200 lb (155,673 kg) and a recreational sector ACL of 436,800 lb (198,129 kg). The ACLs are based on the sector allocation ratio developed by the Council for red grouper (44 percent commercial and 56 percent recreational) established in Amendment 24 to the FMP (77 FR 34254; June 11, 2012).

Consistent with the results of the latest stock assessment for red grouper (Southeast Data Assessment and Review (SEDAR) 53) and the acceptable biological catch (ABC) recommendation from the Council's Scientific and Statistical Committee (SSC) accepted by the Council, this final rule reduces the total, commercial, and recreational ACLs. The revised commercial ACL is set at 61,160 lb (27,742 kg), for 2018, 66,000 lb (29,937 kg), for 2019, and

71,280 lb (32,332 kg), for 2020 and subsequent fishing years. The revised recreational ACL is set at 77,840 lb (35,308 kg), for 2018, 84,000 lb (38,102 kg), for 2019, and 90,720 lb (41,150 kg), for 2020 and subsequent fishing years. The total ACL is set at 139,000 lb (63,049 kg) for 2018, 150,000 lb (68,039 kg) for 2019, and 162,000 lb (73,482 kg) for 2020 and subsequent fishing years. The total ACL is equal to the SSC's ABC recommendation; the ABC recommendation is the projection at  $F_{REBUILD}$  under low recruitment scenarios, which equals the yield at  $75\%F_{MSY}$ . This final rule does not change the sector allocations.

For the last several years (2014-2016), commercial landings have averaged 50,204 lb (22,772 kg), which is less than the commercial ACL being implemented through Abbreviated Framework 1. The recreational landings have been highly variable since 2012, and using the average recreational landings from 2014-2016, the reduced ACL for the recreational sector is predicted to result in a shortened recreational fishing season, with closure dates ranging from July 26 to August 19 and based on the annual seasonal opening date of May 1. If the red grouper stock experiences a year of high recruitment, the proposed reduced ACLs would constrain future commercial and recreational harvest and prevent overfishing. Because the

ACLs will be set lower than the overfishing limit, implementation of this final rule is expected to end overfishing of red grouper.

### **Comments and Responses**

NMFS received 12 comments during the public comment period on the proposed rule for Abbreviated Framework 1. The commenters included individuals as well as commercial, private recreational, and charter vessel/headboat (for-hire) recreational fishing entities. The majority of comments opposed the reduction in the red grouper ACLs. Six of those submissions raised issues with the proposed red grouper ACL reduction and recommended other management measures for reducing red grouper harvest. These comments are summarized with NMFS' responses below. Additional comments that specifically relate to the action in Abbreviated Framework 1 and contained in the proposed rule, as well as NMFS' respective responses, are summarized and responded to below.

*Comment 1:* NMFS should implement other management measures in place of the proposed ACL reductions, including trip limits, reduced bag limits, increased size limits, and a closed season for harvest with spear.

*Response:* While the management measures suggested could prove effective at slowing or even reducing red

grouper harvest, they would not serve as substitutes for the reductions in the ACLs. The Magnuson-Stevens Act and its implementing regulations require all FMPs to contain ACLs that prevent overfishing. The current ACLs for the red grouper stock far exceed what the best available scientific information indicates is necessary to prevent overfishing; therefore, this rule reduces current ACLs to acceptable levels. Although the Council chose ACL reductions to immediately address overfishing of red grouper in the South Atlantic, it may consider other measures, such as those suggested by public commenters, to constrain future harvest effectively. NMFS and the Council are currently developing Regulatory Amendment 30 to address rebuilding of the overfished red grouper stock.

*Comment 2:* The red grouper ACLs should not be reduced as the population is abundant.

*Response:* NMFS disagrees. Based on the latest stock assessment for South Atlantic red grouper (SEDAR 53) completed in February 2017, NMFS determined that the stock is overfished, undergoing overfishing, and not making adequate rebuilding progress. The Magnuson-Stevens Act requires NMFS to notify the Council of these determinations, and within 2 years of that notification, implement regulations to end overfishing immediately and

rebuild the stock. The Southeast Fisheries Science Center produced rebuilding projections based on SEDAR 53, and the Council's SSC provided ABC recommendations to end overfishing of red grouper. Because the ACLs would be set less than the overfishing limit, Abbreviated Framework 1 will end overfishing of red grouper immediately upon implementation of the final rule as well as provide biological benefits to the stock. Therefore, given the current stock status, the ACL reductions in this final rule are appropriate and are consistent with the requirements of the Magnuson-Stevens Act. Further, the Council is currently developing a new red grouper rebuilding plan through Regulatory Amendment 30 to the FMP. The Council is also considering changes to red grouper management measures through other regulatory amendments to the FMP.

*Comment 3:* The proposed ACL reduction is too drastic. The ACL should be reduced by a lesser amount, and any ACL change implemented should be through a step-down approach over several years.

*Response:* As explained in the response to *Comment 1*, NMFS and the Council are mandated by the Magnuson-Stevens Act to implement regulations that would end overfishing immediately within 2 years of the Council's notification of stock status. In October 2017, the Council's SSC provided

an ABC recommendation for 2018 of 139,000 lb (63,049 kg) to end overfishing. The ACL cannot exceed the ABC; therefore, the Council set the total ACL equal to the ABC.

NMFS acknowledges the reduction in the ACLs for commercial and recreational harvest of red grouper is considerable; however, based on historical landings, the revised ACLs would result in minimal actual reduction in harvest. Since 2013, South Atlantic red grouper annual landings have totaled less than 30 percent of the stock ACL. As described in Abbreviated Framework 1, the reduced level of observed landings is supported by anecdotal information received from commercial and recreational stakeholders who often report an absence of red grouper in large quantities in the South Atlantic. According to SEDAR 53, there is uncertainty in what could be the cause of low observed numbers of fish, and the recent (since 2005) low spawning trend may or may not continue into the future.

*Comment 4:* The proposed ACL reduction will have a significant economic impact to commercial fishermen, especially small operations and family businesses.

*Response:* NMFS disagrees. Commercial landings of red grouper have been declining over the years, and in the most recent years (2012-2016), landings have averaged 50,204 lb (22,772 kg), which is less than the commercial ACL proposed



in Abbreviated Framework 1. In addition, red grouper has accounted for a relatively small percentage (2.7 percent) of total revenues from commercial landings of the approximately 240 federally permitted snapper-grouper commercial vessels that landed red grouper. Thus, any adverse impacts on commercial fishermen from the ACL reduction would likely be minimal, although NMFS recognizes that such impacts would be uneven across fishermen participating in red grouper harvest in the South Atlantic.

#### **Classification**

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (EO) 12866. This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

Please note Abbreviated Framework Amendment 1

considered only one alternative to reduce the ACLs, based on the SSC recommendation, to meet the immediate and urgent need to end overfishing within 2 years as mandated by the Magnuson-Stevens Act. Amendment 30, which is currently being developed, will consider several alternatives for rebuilding the overfished red grouper stock.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. One comment from the public suggested that the rule would have significant economic impacts to commercial fishermen. NMFS disagrees with this comment as explained in the response to *Comment 4* and as discussed in the proposed rule. No comments from the SBA's Chief Counsel for Advocacy were received regarding the certification, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

Commercial, Fisheries, Fishing, Overfishing,  
Recreational, Red grouper, South Atlantic.

Dated: July 23, 2018.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory  
Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part  
622 is amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND  
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to  
read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.193, revise paragraph (d) to read as  
follows:

**§ 622.193 Annual catch limits (ACLs), annual catch targets  
(ACTs), and accountability measures (AMs).**

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(d) *Red grouper*—(1) *Commercial sector*. (i) If  
commercial landings for red grouper, as estimated by the

SRD, reach or are projected to reach the commercial ACL, specified in paragraph (d)(1)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of red grouper is prohibited and harvest or possession of red grouper in or from the South Atlantic EEZ is limited to the bag and possession limits. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If the commercial landings for red grouper, as estimated by the SRD, exceed the commercial ACL, specified in paragraph (d)(1)(iii) of this section, and the combined commercial and recreational ACL, specified in paragraph (d)(3) of this section, is exceeded during the same fishing year, and the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL in the following

fishing year by the amount of the commercial ACL overage in the prior fishing year.

(iii) The commercial ACL for red grouper is 61,160 lb (27,742 kg), round weight, for 2018; 66,000 lb (29,937 kg), round weight, for 2019; and 71,280 lb (32,332 kg), round weight, for 2020 and subsequent fishing years.

(2) *Recreational sector.* (i) If recreational landings for red grouper, as estimated by the SRD, are projected to reach the recreational ACL, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for red grouper in or from the South Atlantic EEZ are zero.

(ii) The recreational ACL for red grouper is 77,840 lb (35,308 kg), round weight, for 2018; 84,000 lb (38,102 kg), round weight, for 2019; and 90,720 lb (41,150 kg), round weight, for 2020 and subsequent fishing years.

(iii) If recreational landings for red grouper, as estimated by the SRD, exceed the recreational ACL, specified in paragraph (d)(2)(ii) of this section, then

during the following fishing year recreational landings will be monitored for a persistence in increased landings, and if necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season and the recreational ACL by the amount of the recreational ACL overage, if the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, and if the combined commercial and recreational ACL, specified in paragraph (d)(3) of this section, is exceeded during the same fishing year. The AA will use the best scientific information available to determine if reducing the length of the recreational season and recreational ACL is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season and ACL, the bag and possession limits for red grouper in or from the South Atlantic EEZ are zero.

(3) The combined commercial and recreational ACL for red grouper is 139,000 lb (63,049 kg), round weight, for 2018; 150,000 lb (68,039 kg), round weight, for 2019; and 162,000 lb (73,482 kg), round weight, for 2020 and subsequent fishing years.

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